

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOSHCO TECH, LLC,

Plaintiff(s),

v.

DOES 1-4,

Defendant(s).

Case No. 2:20-CV-521 JCM (EJY)

ORDER

Presently before the court is defendant Cheryl White's motion for attorney's fees. (ECF No. 26). Plaintiff JoshCo Tech, LLC filed a response, (ECF No. 27), to which defendant replied, (ECF No. 29).

Also before the court is plaintiff's motion for reconsideration. (ECF No. 28). Defendant responded, (ECF No. 30), to which plaintiff replied, (ECF No. 31).

On October 26, 2020, this court dismissed plaintiff's claims for lack of personal jurisdiction with prejudice. (ECF No. 23). This court grants plaintiff's instant motion for reconsideration, but only to the extent that the dismissal is now "*without prejudice*." (ECF No. 28). Reconsideration is appropriate if the court "committed clear error or the initial decision was manifestly unjust." *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). This court's dismissal should have been without prejudice. "Dismissals for lack of jurisdiction 'should be . . . without prejudice so that a plaintiff may reassert his claims in a competent court.'" *Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999) (citing *Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988)).

Having now dismissed plaintiff's claims *without prejudice*, this court denies defendant's motion for attorney's fees. (ECF No. 26). Defendant is not the "prevailing party" as required for

1 her motion. *See Gold Value Int'l Textile, Inc. v. Sanctuary Clothing, LLC*, 925 F.3d 1140, 1149–  
2 50 (9th Cir. 2019) (finding that a party is a “prevailing party” entitled to attorney’s fees if the  
3 party obtained a court order that “create[s] a material alteration of the legal relationship of the  
4 parties.”). The instant dismissal for lack of personal jurisdiction does not materially alter the  
5 legal relationship between the parties. *See Oscar v. Alaska Dep’t of Educ. & Early Dev.*, 541  
6 F.3d 978, 981 (9th Cir. 2008) (“[D]ismissal without prejudice does not alter the legal relationship  
7 of the parties.”).

8 Accordingly,

9 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant’s motion for  
10 attorney’s fees (ECF No. 26) be, and the same hereby is, DENIED.

11 IT IS FURTHER ORDERED that defendant’s motion for reconsideration (ECF No. 28)  
12 be, and the same hereby is, GRANTED in part.

13 DATED December 28, 2020.

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15 UNITED STATES DISTRICT JUDGE